IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.344 OF 2006

Kartar Singh Bhatti. ...Petitioner/Orig.Respondent..

vs.

L & T Finance Ltd. ...Respondent/Orig.Claimant.

Mr.K.H.Mody i/b. Laxman Konal, for Petitioner.

Ms.Shakuntala Joshi, for Respondent.

CORAM: D.K.DESHMUKH,J.

DATED: 18th September,2006.

P.C.:-

1. Heard the learned Counsel appearing for both the sides. From the reply filed by the respondent it is clear that the petitioner was served with the Award in the year 2005. After the reply was filed there is no affidavit filed by the petitioner stating therein that the packet was not tendered to him. In view of the judgment of the learned Single Judge of this Court in the case "Meghji Kanji Patel Vs. Kundanmal Chamanlal Mehtani, 1968 Mh.L.J. 490 it is clear that for rebutting the presumption created by the endorsement made by the postal authority, it is necessary for the addressee to file an affidavit saying on

oath that the packet was not tendered to him. No such affidavit has been filed by the petitioner. Copy of the reply filed by the respondent has been served on the petitioner wherein it is clearly stated that the packet was tendered to the petitioner and the endorsement has been made on the packet by the postal authority still the petitioner has not filed any affidavit stating that the packet was not tendered to him.

2. So far as the merit of the matter is concerned, it is evident from the Award that the petitioner was served with the notice. He appeared and sought time to file reply and time to file reply was given to him. Admittedly no reply has been filed. No explanation has been given in the affidavit why no reply has been filed. The only grievance made is that the final notice was not given by the arbitrator. Even assuming that the final notice was not given by the learned Arbitrator, as the petitioner had appeared and at his own request he has been given time to file reply, and admittedly no reply has been filed, giving of notice to the petitioner would have been an empty formality. It is clear from the conduct of the petitioner that the petitioner has no defence to offer. He is merely interested in killing time. Even the conduct of the petitioner in this Court shows that he is bent upon only seeking adjournment. In the limited jurisdiction of this Court under Section 34 of the Arbitration and Conciliation Act,1996 the petition cannot be entertained. Hence, the petition is disposed of.